

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:06CV308-1-MU

JOSEPH MICHAEL GRIFFITH,

Plaintiff,

v.

S.A. BIRD, et al.,

Defendants.

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ORDER

THIS MATTER comes before the Court for an initial review of Plaintiff's Complaint pursuant to 42 U.S.C. § 1983, filed July 27, 2006.

After a careful review of the record, the Court finds that Defendants Bird and Brown should file an answer detailing Plaintiff's allegations and responding to each.

Plaintiff, however, fails to state a claim against Rick Jackson, the Superintendent of Lanesboro Correctional Institution. That is, Plaintiff fails to allege any personal conduct by Rick Jackson or that other defendants were acting pursuant to a policy or custom of Rick Jackson. Consequently, Rick Jackson is dismissed from this case. See Vinnedge v. Gibbs, 550 F.2d 926, 929 (4th Cir. 1977)(supervisory liability under § 1983 may not be predicated only on the theory of respondeat superior); Fisher v. Washington Metropolitan Area Transit Author., 690 F.2d 1133, 1142-43 (4th Cir. 1982)(section 1983 requires a showing of personal fault on the part of a defendant either based on the defendant's personal conduct or another's conduct in execution of the defendant's policies or customs).

In addition, the North Carolina Department of Corrections is not a proper party to a § 1983 suit and it too is dismissed from this matter. See Strickler v. Waters, 989 F.2d 1375 (4th Cir.)(holding that neither a state nor its department of corrections is a proper party to a § 1983 action), cert. denied, 510 U.S. 949 (1993).

IT IS THEREFORE ORDERED THAT:

1. Rick Jackson and the North Carolina Department of Corrections are DISMISSED from this matter; and
2. The Clerk shall issue summons and deliver it forthwith to the U. S. Marshal who will make service of process without additional cost.

Signed: August 1, 2006

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

